

Example: An employee received commissions of \$192 for a commission computation period of 96 hours, including 16 overtime hours (*i.e.*, two workweeks of 48 hours each). Dividing the \$192 by 96 gives a \$2 increase in the hourly rate. If the employee is entitled to overtime after 40 hours in a workweek, he is due an additional \$16 for the commission computation period, representing an additional \$1 for each of the 16 overtime hours.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7310, Jan. 23, 1981]

§ 778.121 Commission payments—delayed credits and debits.

If there are delays in crediting sales or debiting returns or allowances which affect the computation of commissions, the amounts paid to the employee for the computation period will be accepted as the total commission earnings of the employee during such period, and the commission may be allocated over the period from the last commission computation date to the present commission computation date, even though there may be credits or debits resulting from work which actually occurred during a previous period. The hourly increase resulting from the commission may be computed as outlined in the preceding paragraphs.

§ 778.122 Computation of overtime for commission employees on established basic rate.

Overtime pay for employees paid wholly or partly on a commission basis may be computed on an established basic rate, in lieu of the method described above. See § 778.400 and part 548 of this chapter.

Subpart C—Payments That May Be Excluded From the “Regular Rate”

THE STATUTORY PROVISIONS

§ 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

(a) *Section 7(e)*. This subsection of the Act provides as follows:

As used in this section the “regular rate” at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency; [discussed in § 778.212].

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; [discussed in §§ 778.216 through 778.224].

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs; [discussed in §§ 778.208 through 778.215 and 778.225].

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees; [discussed in §§ 778.214 and 778.215].

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be; [discussed in §§ 778.201 and 778.202].

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other